IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 78-1533

CONNECTICUT BOARD OF PARDONS, ET AL
Petitioners

v.

DAVID DUMSCHAT
Respondent

JAMES BROWN, STANLEY CZAJA and
JAMES SHELTON
Intervening Respondents

CONNECTICUT BOARD OF PARDONS, ET AL
Petitioners

v.

JAMES BROWN, STANLEY CZAJA and
JAMES SHELTON
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners, who consist of the membership of the Connecticut Board of Pardons, respectively pray that a Writ of Certiorari issue to review the judgment and opinion of the United States court of Appeals for the Second Circuit which affirmed a declaratory judgment entered by the

United States District Court for the District of Connecticut ordering and adjudging that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the Board of Pardons to furnish a statement of reasons and facts relied upon to inmates serving life terms when their application for pardon is denied.

The opinion of the United States Court of Appeals was rendered on January 11, 1979.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit, not yet reported, appears in the Appendix at pp. 1a-3a.

The opinion of the District Court for the District of Connecticut is reported in 462 F. Supp. 509 and appears in the Appendix at pp. 4a-8a. Incorporated in its decision is an earlier decision from the District Court in *Dumschat v. Board of Pardons*, 432 F. Supp. 1310 (D. Conn. 1977).

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Second Circuit were rendered on January 11, 1979. This Petition for a Writ of Certiorari was filed within ninety days of this date.

This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Does the Due Process Clause of the Fourteenth Amendment to the United States Constitution require the Connecticut Board of Pardons when denying a pardon to an inmate serving a sentence of life imprisonment to furnish the inmate with a written statement of reasons and the facts relied upon when denying such pardon relief?

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The opinion of the United States Court of Appeals for the Second Circuit covered a consolidated appeal to that Court from two declaratory judgments, each entered by the District Court for the District of Connecticut.

The following is the pertinent background:

In February, 1976, David K. Dumschat instituted an action in the District Court for the District of Connecticut claiming, in essence, that he had been deprived of a federally protected right within the purview of 42 U.S.C. 1983 because the Connecticut Board of Pardons had, on a number of occasions, denied him a pardon and on no occasion did the Board provide him with a statement of reasons for this denial. Dumschat's claim is that he is entitled to such a statement under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

In that action Judge Blumenfeld concluded that ". . . due process attaches to the denial of a pardon to an inmate like Dumschat sentenced to life-imprisonment who has served almost two-thirds of his sentence." (See: *Dumschat v. Connecticut Board of Pardons*, 432 F.Supp. 1310, 1315, Note 17.) In accordance with the Court's opinion, a declaratory judgment was issued ". . . that judgment enter and hereby does enter for the Plaintiff David K. Dumschat and that the Defendant the Connecticut Board of Pardons furnish Plaintiff a written statement of reasons and facts relied upon in denying him a pardon."

The authority to pardon which is involved is the authority of the Connecticut Board of Pardons under Section 18-26, Connecticut General Statutes, to reduce the minimum term of an inmate including, of course, an inmate serving a life term, thereby accelerating the inmate's eligibility for consideration for release to the community by the Connecticut Board of Parole. (See: *Dumschat v. Board of Pardons, State of Connecticut*, 432 F.Supp. 1310, 1312 (1977).

The Board of Pardons took an appeal to the United States Court of Appeals for the Second Circuit from that judgment.

On June 16, 1977, Dumschat was given relief by the Board of Pardons. The parties agreed that this relief rendered the appeal moot pursuant to *Weinstein v. Bradford*, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975); *Holup v. Gates*, 544 F.2d 82 (2d Cir. 1976) cert. denied, 97 S.Ct. 1571 (1977).

By order of the Court dated January 12, 1978, the case was remanded to the District Court.

In December, 1977, James Brown, Stanley Czaja and James Shelton, each of whom are also serving life sentences, file an action in the District Court making the same claims as Dumschat.

As with Dumschat, these three plaintiffs had been denied a pardon without being given a statement of reasons.

The defendants moved in the District Court to vacate its judgment in *Dumschat* and to dismiss as moot. This motion was denied.

The plaintiffs in both actions in the District Court were represented by the same counsel. The plaintiffs Brown, Czaja and Shelton filed a Motion to Intervene in *Dumschat*,

to consolidate their action with *Dumschat* and to have the consolidated action certified as a class action.

All of these motions were granted by Judge Blumenfeld.

An additional evidentiary hearing was held in the District Court at which the parties agreed and the Court approved that the record before the Court in *Dumschat* would be included in the record in the consolidated actions then before the Court as well as the record in a previous similar action which became moot after trial but before decision, *Carrona v. John R. Manson, et al*, (D. Conn.), Civil No. H-74-377.

Judge Blumenfeld reached the same conclusion that he had reached in his earlier decision in *Dumschat* and, in addition, went beyond that earlier decision and held that:

> "Therefore, because an inmate's liberty interest is seriously affected by the pardon procedure, I need not 'draw the constitutional line' in the present action.[1] In a pardon hearing of an inmate sentenced to life imprisonment, the Due Process Clause protects the inmate's interest in obtaining reasons for denial of pardon irrespective of the time served on his sentence when his pardon application is considered.
>
> After hearing the testimony of the present Chairman of the Board of Pardons, it appears that the conditions present at the time of my original decision on this matter continue to exist without interruption or change. Therefore, in all respect, I adhere to my prior decision in this matter and rule that the Connecticut Board of Pardons furnish any member of the plaintiff class a written statement of reasons and the facts relied on when he is denied a pardon." (See Appendix, p. 8a)

[1] As is noted above, Judge Blumenfeld's previous decision was limited to persons sentenced to a term of life imprisonment who have served ". . . almost two-thirds of [their] minimum term."

Two judgments were entered in the District Court, one in *Dumschat* as consolidated with Brown, Czaja and Shelton as intervening plaintiffs (District Court Docket No. H-76-102) and the second in the action brought by Brown, Czaja and Shelton (District Court Docket No. H-77-657).

The pertinent portions of these judgments which were affirmed by the United States Court of Appeals for the Second Circuit and which state the question presented in this Petition for a Writ of Certiorari is that portion of the judgment which states that "It is therefore accordingly ORDERED and ADJUDGED that Judgment enter and hereby does enter . . . that the Connecticut Board of Pardons furnish any member of the Plaintiff class [inmates currently serving sentences of life imprisonment at the Connecticut Correctional Institution, Somers and the Connecticut Correctional Institution, Enfield] a written statement of reasons and facts relied upon when such member of the Plaintiff class is denied a pardon by the Board." (See Appendix, p. 9a-10a)

REASONS FOR GRANTING THE WRIT

I. THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DECIDES A FEDERAL QUESTION IN A WAY WHICH IS IN CONFLICT WITH THE APPLICABLE DECISION OF THIS COURT.

Rule 19.1.(b) of the Rules of this Court provides, in part, that one of the factors to be considered in granting certiorari is whether ". . . a court of appeals . . . has decided a federal question in a way in conflict with applicable decisions of this court . . ."

The Second Circuit concluded that because "The vast majority of those in the plaintiff class, a class composed of those serving life sentences, are granted relief by the Board of Pardons prior to the expiration of 20 years, the statutory

minimum period (less time for good behavior) that lifers must ordinarily serve before they are eligible for parole. [that] This almost invariable practice creates in the class a liberty interest in the pardons process."

The authority of the Connecticut Board of Pardons, insofar as is relevant to this action, is provided for in Section 18-26, Connecticut General Statutes. This statute provides, in part, that:

> "(a) Jurisdiction over the granting of, and the authority to grant, commutations of punishment or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death shall be vested in the board of pardons.
> (b) Said board shall have authority to grant pardons, conditioned or absolute, for any offense against the state at any time after the imposition and before or after the service of any sentence. No pardon shall restore the privileges of an elector to any person who has forfeited the same by reason of conviction of crime."

As is noted above, that authority of the Board which is involved here is its authority to reduce the minimum term of the sentence of a person who is confined with the result being that the person's eligibility to be considered for release to the community by the Connecticut Board of Parole is accellerated. (See: *Dumschat v. Board of Pardons, State of Connecticut*, 432 F.Supp. 1310, 1312 (1977).

The paroling authority in the State of Connecticut is in the Connecticut Board of Parole (See: Section 54-124a, Connecticut General Statutes). The Board of Parole is a separate and distinct agency from the Board of Pardons.

Section 54-125, Connecticut General Statutes, provides, insofar as is relevant to this case, that "Any person

confined for an indeterminate sentence, after having been in confinement under such sentence for not less than the minimum term, or, if sentenced for life, after having been in confinement under such sentence for not less than the minimum term imposed by the court, less such time, not exceeding a total of five years, as may have been earned under the provisions of section 18-7, may be allowed to go at large on parole in the discretion of the panel of the board of parole for the institution in which the person is confined. . . ."

This conclusion of the Second Circuit of a "liberty interest" is contrary to the opinion of this Court in *Schick v. Reed*, 419 U.S. 256, 95 S.Ct. 379, 42 L.Ed.2d 430 (1974).

In *Schick* this Court dealt with the authority of the President to ". . . have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." Article 2, Section 2, Clause 1, United States Constitution.

In *Schick* this Court characterized one who seeks a pardon as a ". . . person who *petitions for mercy* . . ." *Schick*, supra, 419 U.S. 267, 95 S.Ct. 385 (emphasis added).

In *Schick*, this Court considered the origins of the President's pardoning power and observed the following:

> "At the time of the drafting and adoption of our Constitution it was considered elementary that the prerogative of the English crown could be exercised upon conditions:
>
> 'It seems agreed, That the king may extend his mercy on what terms he pleases, and consequently may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend.' 2 W. Hawkins, Pleas of the Crown 557 (6th ed. 1787)." *Schick*, supra, 419 U.S. 261, 95 S.Ct. 382.

This Court then went on to hold that:

> "The history of our executive pardoning power reveals a consistent pattern of adherence to the English common law practice." *Schick*, supra, 419 U.S. 262, 95 S.Ct. 383.

This Court further held that "The plain purpose of the broad power conferred by Section 2, cl. 1, was to allow *plenary* authority in the President to '*forgive*' the convicted person in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with *conditions which are in themselves constitutionally unobjectionable*." *Schick*, supra, 419 U.S. 266, 95 S.Ct. 385. (Emphasis added).

Thus, since the pardoning power is "plenary" subject only to the attachment of conditions which are constitutionally unobjectionable then the denial of a pardon must be "plenary" subject only to the condition that a denial may not be based upon constitutionally impermissable reasons. There is no claim in this case that the denial was based upon constitutionally impermissable reasons.

If the Connecticut Board of Pardons were required to state reasons for denying relief, then it would seem inescapable that the President of the United States in denying pardon relief would similarly be required to state his reasons. Such a conclusion seems ridiculous on its face.

So long as the Board does not deny a pardon for a constitutionally impermissable reason there is no statement which it could give which would serve any purpose. It is impossible to conceive of a situation wherein any court absent the denial of a pardon because of the applicant's race, religion, etc. would overrule a Pardon Board decision to deny clemency.

2. THE QUESTION OF TO WHAT EXTENT, IF ANY, DUE PROCESS APPLIES TO PARDON PROCEEDINGS IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT.

Rule 19.1(b) of this Court further provides, in part, that one of the factors to be considered in granting Certiorari is whether ". . . a Court of Appeals has . . . decided an important question of Federal Law which has not been, but should be, settled by this Court . . ."

The rationale of the United States Court of Appeals for the Second Circuit in this case is inextricably related to its decisions in various cases involving parole release hearing. The issue of to what extent, if any, Due Process applies to parole release hearings has not yet been decided by this Court and the decisions in this regard, among the various circuits, are in conflict (See: *Scott v. Kentucky Parole Board*, 97 S.Ct. 343, f. 1 (1976).

This Court has recently granted certiorari in *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, et al*, 99 S.Ct. 76, 77 (1979), to review this question.

Since, this Court has clearly recognized that the issue of to what extent, if any, due process applies to a parole release hearing, is one which should be "settled" by this Court the review sought in this case involving pardon is clearly within both the letter and spirit of Rule 19.1(b) of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this case presents (1) an opinion of a United States Court of Appeals deciding a federal question in a way which is in conflict with the applicable decision of this court and

(2) which involves an important question of federal law which has not been but should be settled by this court.

The Petitioners respectfully request that a Writ of Certiorari be issued to review the judgment and the opinion of the United States Court of Appeals for the Second Circuit.

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Counsel for Petitioners

CERTIFICATION

This is to certify that on this 6th day of April, 1979, two copies of this Petition for Writ of Certiorari and Appendix thereto were mailed, postage prepaid, to Stephen Wizner, 127 Wall Street, New Haven, Connecticut, counsel for the Respondents.

STEPHEN J. O'NEILL
Assistant Attorney General

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 539, 540 — August Term, 1978.

(Argued January 9, 1979 Decided January 11, 1979.)

Docket Nos. 78-2124-25

DAVID DUMSCHAT,

Plaintiff-Appellee,

JAMES BROWN, STANLEY CZAJA and JAMES SHELTON,

Intervening Plaintiffs-Appellees,

v.

BOARD OF PARDONS, State of Connecticut; and RICHARD K. LUBLIN (Chairman), ALVIN DOZEMAN, PAUL J. DUBISSETTE, Members of the Board of Pardons,

Defendants-Appellants.

JAMES BROWN, STANLEY CZAJA and JAMES SHELTON,

Plaintiffs-Appellees,

v.

BOARD OF PARDONS, State of Connecticut; and PAUL J. MCQUILLAN (Chairman), ALVIN DOZEMAN, MICHAEL E. DUBISSETTE, JOHN SPEZIALE, and PHILIP TATOIAN, Members of the Board of Pardons,

Defendants-Appellants.

Before:

KAUFMAN,

Chief Judge,

SMITH and OAKES,

Circuit Judges.

Appeal from declaratory judgment entered in the United States District Court for the District of Connecticut,

M. Joseph Blumenfeld, *Judge*, requiring statement of reasons by Connecticut Board of Pardons in case of denial of application for pardon by prisoners serving life terms. Affirmed.

STEPHEN J. O'NEILL, Assistant Attorney General (Carl R. Ajello, Attorney General of the State of Connecticut, of counsel), *for Appellants*.

STEPHEN WIZNER, New Haven, Conn. (Yale Legal Clinic, Dennis E. Curtis, Mary F. Keller, Alice Bussiere, Judith Resnik, of Counsel), *for Appellees*.

PER CURIAM:

On this appeal from a declaratory judgment of the United States District Court for the District of Connecticut in a class action requiring a statement of reasons by the Connecticut Board of Pardons in case of denial of application for pardon by prisoners serving life terms, we affirm essentially for the reasons given by Judge Blumenfeld in his opinions below, 432 F. Supp. 1310 (D. Conn. 1977), —— F. Supp. —— (Aug. 18, 1978).

Although pardons at first glance might appear to be different from parole decisions, the Connecticut statutory authority given to the Board of Pardons and its integral part in parole decisions make the two processes similar. The argument by appellants that pardons are solely discretionary decisions of mercy, relying on *Schick* v. *Reed*, 419 U.S. 256 (1974), is not well taken since *Schick* is based on the constitutional authority of the federal executive rather than on the processes of a statutory state board essentially determining the date of eligibility for consideration by another (parole) board.

Written statements of reasons for denial are part of the due process requirements surrounding parole decisions. *Coralluzzo* v. *New York State Parole Board*, 566 F. 2d 375 (2d Cir. 1977), *cert. dismissed*, 435 U.S. 912 (1978); *Zurak* v. *Regan*, 550 F. 2d 86 (2d Cir.), *cert. denied*, 433 U.S. 914 (1977); and *Haymes* v. *Regan*, 525 F. 2d 540 (2d Cir. 1975). These cases are based on the expectations of inmates in regard to parole possibilities which lead to those inmates' acquiring some "liberty interest" in the parole process.

The facts are not seriously in dispute. The vast majority of those in the plaintiff class, a class composed of those serving life sentences, are granted relief by the Board of Pardons prior to the expiration of 20 years, the statutory minimum period (less time for good behavior) that lifers must ordinarily serve before they are eligible for parole. This almost invariable practice creates in the class a liberty interest in the pardons process. As thoughtfully explained in Judge Blumenfeld's opinions, the due process balancing in regard to decisions of the Board of Pardons is similar to that involving a parole board, and thus due process in the proceedings of the Board of Pardons in cases of inmates serving life sentences also requires written statements setting forth reasons for denial. Such statements would provide protection against arbitrary and constitutionally impermissible decisions by the Board by forcing the Board to articulate its reasons for denial. The Board would be encouraged to give more thoughtful consideration to each application. A statement of reasons for denial would aid an inmate in correcting any behavior which was considered negative by making him aware of such behavior. Finally, such statements would help the shifting membership of the Board to be more consistent in its decisions and would create no undue administrative burden.

The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DAVID K. DUMSCHAT, ET AL

v.

BOARD OF PARDONS OF THE
STATE OF CONNECTICUT, ET AL

CIVIL NO. H-76-102

MEMORANDUM OF DECISION

Background

This is a class action by the plaintiffs on behalf of themselves and all other inmates of the State of Connecticut who are currently serving sentences of life imprisonment at the Connecticut Correctional Institutions at Somers and at Enfield and who have been, or who will be, denied pardons during their current terms of incarceration by the defendant Connecticut Board of Pardons. The plaintiffs seek a declaratory judgment that the Due Process Clause of the fourteenth amendment to the United States Constitution entitles them to a written statement of reasons when they are denied pardons.

Plaintiff David Dumschat commenced the instant action in February 1976. At that time he was serving a sentence of life imprisonment at the Connecticut Correctional Institution at Enfield following a homicide conviction in 1964. Prior to February 1976, Mr. Dumschat had appeared before the Board of Pardons several times and had never been told why he had been denied a pardon.

On November 18, 1976, this court held an evidentiary hearing at which J. Bernard Gates, Chairman of the Connecticut Board of Parole, and Richard Lublin, then Chairman of the Board of Pardons, testified. Following addi-

tional submissions of written evidence by the defendants, on June 16, 1977, the court issued a declaratory judgment that Mr. Dumschat was entitled to a written statement of reasons when the board denied him a pardon. *Dumschat v. Board of Pardons*, 432 F. Supp 1310 (D. Conn. 1977). The defendants appealed the decision to the United States Court of Appeals for the Second Circuit. However, on June 16, 1977, Mr. Dumschat received a pardon. The defendants, therefore, did not pursue their appeal, but instead filed a motion with the Court of Appeals on August 16, 1977, requesting that the judgment of the District Court be vacated and that the case be remanded. On August 29, 1977, the defendants also filed a motion with this court to vacate the judgment and dismiss the complaint, and on September 13, 1977, the plaintiff consented to having the suit remanded to this court.

On December 20, 1977, while the two motions were pending, the plaintiff-intervenors, James Brown, Stanley Czaja, and James Shelton, filed a separate action claiming that their constitutional rights had been denied when the Board of Pardons denied them pardons without giving them statements of reasons. The three men were then, and are now, inmates at the Connecticut Correctional Institution at Enfield serving sentences of life imprisonment as a result of homicide convictions. Under the present sentences, Mr. Brown, Mr. Czaja, and Mr. Shelton will not be eligible for parole until 1987, 1982 and 1988 respectively. Conn. Gen. Stat. § 54-125, as amended P.A. 76-336 §7 (June 9, 1976). Each of them has been denied a pardon by the Board of Pardons at least twice, with the latest denials for Mr. Brown and Mr. Shelton being in October 1977, and the latest denial for Mr. Czaja being in May 1977. At no time have any of the plaintiff-intervenors been told by any of the defendants why their applications for pardons have been denied.

In January 1978, the Court of Appeals remanded the *Dumschat* suit without further instructions. Following this

court's denial of the defendants' motion to vacate the judgment and dismiss the complaint, the plaintiff-intervenors filed motions to intervene in *Dumschat*, to consolidate their action with *Dumschat*, and to have the consolidated suit certified as a class action. On March 9, 1978, an additional hearing was held at which the present Chairman of the Board of Pardons, Paul J. McQuillan, testified. After that hearing, the plaintiff-intervenors' motion to intervene, motion to have their cases consolidated with *Dumschat*, and motion for certification as a class action were granted.

Discussion

In a previous round on the issue of whether the constitution required the Board of Pardons to give a written statement of reasons to an inmate when he was denied a pardon, this court ruled that a written statement of reasons for the board's decision, including the facts upon which it relied, was constitutionally mandated. See *Dumschat v. Board of Pardons*, *supra*. That holding was based upon a determination that in view of the evidence that 75 percent of the inmates sentenced to long minimum terms who have served a substantial portion of that sentence do eventually receive some form of pardon from the board, the particular plaintiff acquired a justifiable expectation of pardon and a liberty interest sufficient to invoke the protection of the fourteenth amendment. In that case, I stated:

> "I need not decide on the facts of this case at what point in his incarceration an inmate acquires a justifiable expectation of pardon and a liberty interest sufficient to invoke the protection of the fourteenth amendment. I conclude only that due process attaches to the denial of a pardon to an inmate like Drumschat sentenced to life imprisonment who has served almost two-thirds of his minimum term."

Id., 432 F. Supp. at 1315 n.17.

The present case is certified as a class action for all inmates currently serving sentences of life imprisonment in Connecticut state facilities at Somers and Enfield. Therefore, the question whether an inmate must have served a certain portion of his minimum term before he "acquires a justifiable expectation of pardon and a liberty interest sufficient to invoke the protection of the fourteenth amendment," must now be considered.

In *Coralluzzo v. New York State Parole Board*, 566 F.2d 375 (2d Cir. 1977), *cert. dismissed as improvidently granted*, 46 U.S.L.W. 3553 (March 7, 1978), the Second Circuit decided the question whether the New York minimum period of imprisonment (MPI) procedure is subject to the Due Process Caluse of the fourteenth amendment. In holding that due process rights were implicated in the MPI proceeding, the Second Circuit ruled that the parole board must provide a written statement of reasons, including facts relied upon by the board, when it sets a MPI that exceeds the statutory minimum.

In *Coralluzzo* the state attempted to distinguish the MPI proceeding from various parole release situations where the court had conferred due process protection, see *United States ex rel. Johnson v. Chairman of New York State Board of Parole*, 500 F.2d 925 (2d Cir.), *vacated as moot*, 419 U.S. 1015 (1974); *Zurak v. Regan*, 550 F.2d 86 (2d Cir.), *cert. denied*, 433 U.S. 914 (1977). The state argued that because the prisoner has no reason to expect "imminent liberty," the MPI procedure implicates only a "very tenuous" liberty interest. The Court of Appeals said:

> "[W]e find no indication either in *Johnson* or in the Supreme Court's recent decisions dealing with liberty interests of prisoners, see *Meachum v. Fano*, 427 U.S. 215, 224-25 (1976); *Wolff v. McDonnell*, 418 U.S. 539, 555-58 (1974); *Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972), that a substantial possibility of im-

mediate release is the sine qua non of a cognizable liberty interest. To draw the constitutional line where the statistics show it to be more likely than not that the particular proceeding will result in immediate release could risk insulating from due process protection those stages of the parole release process which as a practical matter most seriously affect a prisoner's liberty interest."

Therefore, because an inmate's liberty interest is seriously affected by the pardon procedure, I need not "draw the constitutional line" in the present action. In a pardon hearing of an inmate sentenced to life imprisonment, the Due Process Clause protects the inmate's interest in obtaining reasons for denial of pardon irrespective of the time served on his sentence when his pardon application is considered.

After hearing the testimony of the present Chairman of the Board of Pardons, it appears that the conditions present at the time of my original decision on this matter continue to exist without interruption or change. Therefore, in all respect, I adhere to my prior decision in this matter and rule that the Connecticut Board of Pardons furnish any member of the plaintiff class a written statement of reasons and the facts relied on when he is denied a pardon.

SO ORDERED.

Dated at Hartford, Connecticut, this 18th day of August, 1978.

M. JOSEPH BLUMENFELD
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DAVID DUMSCHAT

Plaintiff

JAMES BROWN, STANLEY CZAJA and JAMES SHELTON

Intervening Plaintiffs

v.

BOARD OF PARDONS, State of Connecticut; and RICHARD K. LUBLIN (Chairman), ALVIN DOZEMAN, PAUL J. McQUILLAN, JOHN P. COTTER, and MICHAEL E. DuBISSETTE, individually and in their capacities as members of the Board of Pardons

Defendants

CIVIL NO. H76-102

JUDGMENT

The above-identified action having come on for rehearing before the Court by the Honorable M. Joseph Blumenfeld, United States District Judge, after remand from the Court of Appeals; and,

The Court, having certified the action as a class action and after a hearing on the intervening Plaintiffs' requests for relief, filed its Memorandum of Decision ruling that the Connecticut Board of Pardons furnish any member of the Plaintiff class a written statement of reasons and the facts relied upon when such member of the Plaintiff class is denied a pardon by the Board.

It is therefore accordingly ORDERED and ADJUDGED that Judgment enter and hereby does enter for the Plaintiff class and that the Connecticut Board of Par-

dons furnish any member of the Plaintiff class a written statement of reasons and facts relied upon when such member of the Plaintiff class is denied a pardon by the Board.

Dated at Hartford, Connecticut, this 22nd day of September, 1978.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: WILLIAM D. TEMPLETON
Chief Deputy

APPROVED:

M. JOSEPH BLUMENFELD
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JAMES BROWN, STANLEY CZAJA
and JAMES SHELTON

v.

BOARD OF PARDONS, State of Connecticut, and PAUL J. McQUILLAN (Chairman), ALVIN DOZEMAN, MICHAEL E. DuBISSETTE, JOHN SPEZIALE, and PHILIP TATOIAN, Members of the Board of Pardons

CIVIL ACTION NO. H77-657

JUDGMENT

The above-identified action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge; and,

The Court having consolidated this action with co-pending Civil No. H76-102 for disposition; and,

The Court having granted the Plaintiffs' Motion to Intervene in said co-pending action, Civil No. H76-102; and,

The Court, after a hearing in said consolidated actions on the intervening Plaintiffs' requests for relief, filed its Memorandum of Decision ordering that the Connecticut Board of Pardons provide any member of the Plaintiff class a written statement of reasons and facts relied upon when such member is denied a pardon by the Board;

It is therefore accordingly ORDERED and ADJUDGED that Judgment enter and hereby does enter for the Plaintiffs and that the Connecticut Board of Pardons provide any member of the Plaintiff class with a written

statement of reasons and facts relied upon when such Plaintiff class member is denied a pardon by the Board.

Dated at Hartford, Connecticut, this 22nd day of September, 1978.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: WILLIAM D. TEMPLETON
Chief Deputy

APPROVED:

M. JOSEPH BLUMENFELD
United States District Judge